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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,995	11/03/2003	Randall T. Webber	111586-101UTL	5373

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PROCOPIO, CORY, HARGREAVES & SAVITCH LLP
530 B STREET
SUITE 2100
SAN DIEGO, CA 92101

EXAMINER

DONNELLY, JEROME W

ART UNIT	PAPER NUMBER
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3764

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	04/06/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/06/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@procopio.com
PTONotifications@procopio.com

Office Action Summary

Application No.

10/699,995

Applicant(s)

WEBBER ET AL.

Examiner

Jerome W. Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) ____ is/are rejected. 1-3, 5, 6, 8, 9, 12-15, 17-20, 22-26, 30-32, 35, 45-51 and 53-55
- 7) ☒ Claim(s) ____ is/are objected to. 10, 11, 36, 37, 40, 41 and 56
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5, 8, 9, 14, 15, 17-19, 22, 23, 25, 26, 45-51, 53 and 54 rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of Stearns.

In regard to claims 1-3, 5, 9, 14, 15, 17, 18, 19, 22, 23, 25, 26, 45-51, 53 and 54.

Gordon discloses a device comprising a main frame (18, 20) having a user support pivot mount (72) a forward end and a rear end, a user support frame (64) pivotally mounted on the user support pivot mount.

A user engagement means (30) movably mounted on said frame, and a rigid connecting linkage (62) pivotally connect to said engagement device and a second end pivoted to said user support.

In regard to claim 2, note the reclined positioned of Gordon fig. 4.

In regard to claim 3, note fig. 3.

In regard to claim 5, note the pivot located at an upper end of element 22 of Gordon.

The limitations of the device of claim 8 and 19 is disclosed in the drawing of fig. 3.

In regard to applicants claim 9, and of a fixed positioned, the applicant is reminded that fixed position is broad enough to read on the secondary user support (56) being held in aligned (pivotal) locations throughout an exercise movement.

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In regard to claims 14, 15 and 17 note element 140 of Gordon.

Claims 1, 20 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Eschenbach 6966872.

Eschenbach discloses the device of claims 1 and 20 as claimed. Eschenbach discloses a device comprising a main frame (54) having a user support pivot mount (62), a user support frame pivotally mounted on the user support pivot mount a user engagement means (18) pivotally mounted on the frame for movement between a start position and an end position a connecting linkage (26), a load for resisting.

In regard to claim 32, the load is linked to said user support frame through linkage (26).

In regard to claim 18, note that Gordon base 18, 26 and 22 include upright 26 and 22.

In regard to claim 20 notes that Gordon has pivot mounts.

Gordon however does not disclose his device wherein it include the additional feature of load for resisting one of the moving parts of said machine.

Stearns however teaches providing the feature of a load for resisting movement.

Given the above teaching of Stearns the examiner notes that it would have been obvious to one of ordinary skill in the art to provide an addition load to the device of Gordon for the purpose of increasing the resistance provided by Gordon during a user's workout.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu.

Yu discloses a device having a main frame, having user support pivot mounts, a user support frame (32) pivotally mounted on a user support pivot, a user engagement means (52) movably mounted on the frame an adjustable connecting linkage and a resistance load.

In regard to claim 6 note that exercise arm 52 is located forward of the user.

Claims 10, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu in view of Breunig.

Yu discloses the device of claims 10, 12 and 13 substantially as claimed absent the teaching of said secondary support comprising a thigh hold down having pads and said thigh hold down being in the form of a belt.

Breunig teaches providing a belt (42) for holding a user stationary on a seat.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to provide a belt on the secondary support (31, 32) of Yu for the purpose of holding a user stationary on pad (31).

In this current rejection of claims 10, 12 and 13 above elements 31 and 32 are being considered as secondary supports.

As to belt members being padded the examiner notes that it is well known in the art of seat belts to pad said belt for the purpose of adding to a user's comfort when wearing said belts.

Claim 30 rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon in view of Ellis.

Gordon discloses the device of claim 30 substantially as claimed absent the device comprising a selectorized weight stack.

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Ellis teaches providing a weight stack used in conjunction with a levered pivotal user support.

Gordon does not disclose his device as including a selectorized weight stack.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art providing a selectorized weight stack interregal with the device of Gordon as a means by which to add or remove resistance to the exercise routine of the user of the device of Gordon.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 24 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yu in view of Wang et al.

Yu discloses the device of claim 24 substantially as claimed absent the teaching of the device comprising a pair of independently movable exercise arms.

Wang et al teaches movable exercise arms (33) said arms being swivable at element 32.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to provide the device of Wang et al with pivot points such as shown by Wang et al fig. 6 for the purpose to enhance and provide unrestricted hand movement while exercising.

In regard to claim 32 not that load (70) is linked to user support frame (32).

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fan.

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Fan discloses a device comprising a main frame (12) a user support frame 22 pivotally mounted to the user support pivot mount, a user engagement means movably and pivotally mounted on the frame, and a connecting linkage (322) connecting movement of the user engagement means to movement of the user support frame.

The main frame, (12) having a base the user support pivot mount (323, 324), an upright strut (321) spaced forward of the pivot mount and having an upper end an exercise arm pivotally mount on an upper end of said strut (321) and said exercise arm having a first portion extending from said arm pivot toward said forward end of said frame and a second portion extending toward said rear of said frame and said handles capable of depending downwardly from said second portion.

Fan however does not disclose his device as including a load for resisting movement.

Yu teaches providing a load means element (70) for increasing the load when exercising.

Given the above teaching the examiner notes that it would have been obvious to one of ordinary skill in the art to provide a load mean on the device of Fan for the purpose of increasing Fans exercising resistance.

Claims 31, 45, 51 and 53-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen.

Chen discloses a device comprising: a main frame (12) having a user support pivot mount (242), a user support frame (20, 24) a user engagement means (30, 36a connecting linkage (34) a load (42) in the form of weight plates.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Brangi.

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Chen discloses the device of claim 30 substantially as claimed absent the teaching of the device including a selectorized weight stack. Chen discloses his device including weight plates.

Brangi discloses a device comprising selectorized weight plates and weight plates.

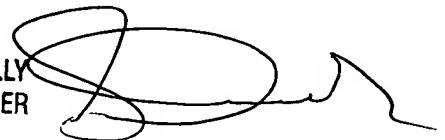
Given the above teachings of substituting weight plates for a selectorized weight stack, the examiner notes that it would have been obvious to do so for the purpose of allowing a user of Chen to more easily add weight to the exercise routine of a user using the device of Chen.

Claims, 10, 36, 37, 40 and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly

JEROME DONNELLY
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to be 'Jerome Donnelly', written over the printed name and title.